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LATHAM & WATKINS
ATTORNEYS AT LAW
1001 PENNSYLVANIA AVE., N.W.
SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
FAX (202) 637-2201

PAUL R. WATKINS (1899 - 1973)
DANA LATHAM (1898 - 1974)

CHICAGO OFFICE
SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
PHONE (312) 876-7700, FAX 993-9767

HONG KONG OFFICE
20TH FLOOR
STANDARD CHARTERED BANK BUILDING
4 DES VOEUX ROAD CENTRAL, HONG KONG
PHONE +852-2522-7886, FAX 2522-7006

LONDON OFFICE
99 BISHOPSGATE, ELEVENTH FLOOR
LONDON EC2M 3XF ENGLAND
PHONE +44-20-7710 1000, FAX 7374-4460

LOS ANGELES OFFICE
633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
PHONE (213) 485-1234, FAX 891-8763

MOSCOW OFFICE
ULITSA GASHEKA, 7, 9TH FLOOR
MOSCOW 123056, RUSSIA
PHONE +7-095 785-1234, FAX 785-1235

NEW JERSEY OFFICE
ONE NEWARK CENTER, 16TH FLOOR
NEWARK, NEW JERSEY 07101-3174
PHONE (973) 639-1234, FAX 639-7298

NEW YORK OFFICE
885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
PHONE (212) 906-1200, FAX 751-4864

ORANGE COUNTY OFFICE
650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CALIFORNIA 92626-1925
PHONE (714) 540-1235, FAX 755-8290

SAN DIEGO OFFICE
701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
PHONE (619) 236-1234, FAX 696-7419

SAN FRANCISCO OFFICE
505 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111-2562
PHONE (415) 391-0600, FAX 395-8095

SILICON VALLEY OFFICE
135 COMMONWEALTH DRIVE
MENLO PARK, CALIFORNIA 94025
PHONE (650) 328-4600, FAX 463-2600

SINGAPORE OFFICE
80 RAFFLES PLACE, #14-20
UOB PLAZA 2, SINGAPORE 048624
PHONE +65-536-1161, FAX 536-1171

TOKYO OFFICE
KANEMATSU BUILDING, 5TH FLOOR
2-14-1 KYOBASHI, CHUO-KU
TOKYO 104-0031, JAPAN
PHONE +813-5524-1900, FAX 5524-1901

February 16, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FILE No. 023976-0008

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ITTA Reply Comments for Telecommunications Service Quality Reporting Requirements Proceeding, CC Docket No. 00-229

Dear Ms. Salas:

Please find enclosed an original and four copies, plus one copy for date-stamp return receipt purposes, of the reply comments of the Independent Telephone & Telecommunications Alliance in *2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking in CC Docket No. 00-229, FCC 00-399 (rel. Nov. 9, 2000). If you have any questions or comments related to the submission of these reply comments, please do not hesitate to contact me directly at (202) 637-1008. Thank you for your consideration in this matter.

Sincerely,

Benoit Jacqmotte

Enclosures

No. of Copies rec'd 0+5
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

REPLY COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

David W. Zesiger, Executive Director
The Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036

Karen Brinkmann
Richard R. Cameron
Benoit Jacqmotte
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004

Its Attorneys

February 16, 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

REPLY COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits its reply comments in response to the Commission's Notice of Proposed Rulemaking in connection with the Commission's review of its service quality reporting requirements for local exchange carriers (LECs).[1]

I. INTRODUCTION

The record in this proceeding does not support the Commission's proposal to extend service quality reporting obligations to new classes of carriers. The Commission simply does not possess the statutory authority under Section 11 to extend its service quality reporting requirements to new classes of carriers. Claims that greater local exchange competition requires new reporting obligations in order to provide consumers new information demonstrate a fundamental misunderstanding of the Commission's biennial review mandate and the central pro-competitive thrust of the 1996 Act. In accordance with Section 11, the Commission must engage in meaningful deregulation and refrain from substituting its judgment for marketplace

forces. Chairman Powell has recently made clear both that continued regulation can distort and stall the development of competition and that consumer protection cannot serve as a straw man for engaging in inappropriate industrial policy. Consumers have been largely silent on the issue, indicating that consumers do not need the Commission to intervene on their behalf. Based on the record, the Office of Management and Budget (OMB) has indicated its disapproval of the extension of any reporting requirements to new carriers. Finally, there is nothing in the record to suggest that the extension of burdensome requirements to small and midsize carriers will generate any consumer benefit, will satisfy any consumer need, or warrants abandonment of the principle of differentiated burdens long endorsed by the Commission.

II. NOTHING IN THE RECORD JUSTIFIES THE EXTENSION OF ANY REPORTING REQUIREMENTS TO MIDSIZE CARRIERS

The record demonstrates that the Commission cannot, under the authority of Section 11, extend service quality reporting to new classes of carriers. Several commenters, including ITTA, have challenged the Commission's authority to extend *new requirements* to carriers under Section 11 of the Communications Act, as amended (Act).[2] The Commission recently responded to similar concerns in the 2000 Biennial Review Report, concluding that: "[A]s part of the biennial review process, we do not intend to impose new obligations on parties *in lieu of current ones*, unless we are persuaded that the former are less burdensome than the latter and are necessary to protect the public interest."[3] Putting aside the question of whether the Commission can accurately evaluate whether new obligations reduce – or merely change – its

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1 *2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking in CC Docket No. 00-229, FCC 00-399 (rel. Nov. 9, 2000) (*Service Quality Notice*).

2 *See, e.g.*, BellSouth Comments at pp. 7-8; Qwest Comments at p. 2.

regulatory burdens, the Commission has made a far different proposal in this proceeding. In the Service Quality Notice, the Commission has proposed to expand service quality reporting requirements to wholly new classes of carriers that formerly had no regulatory reporting burdens of any kind. Such action is clearly beyond both the Section 11 mandate to "repeal or modify" unnecessary regulations and the Commission's commitment not to impose new obligations unless they are less burdensome than current ones.

The record in this proceeding fails to provide any justification for the Commission to regulate in this manner.[4] Commenters who support the Commission's proposal to extend these requirements to new carriers claim that this information will benefit consumers.[5] However, with no explanation of the statutory authority under which the Commission proposes to act and no clear evidence that consumers need additional information, the Commission's obligation is clear: it must refrain from extending new reporting requirements to new classes of carriers within the rubric of the biennial regulatory review process.

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3 *The 2000 Biennial Regulatory Review*, Report in CC Docket No. 00-175, FCC 00-456 (rel. Jan. 17, 2001) (*2000 Biennial Review Report*), ¶ 19 (emphasis added).

4 *See, e.g.*, Comments of the National Telephone Cooperative Association (NTCA) at p. 2 ("The Biennial Review process, therefore, is not the proper proceeding for the FCC to determine whether to impose new quality of service reporting requirements on small LECs and CLECs [competitive LECs] serving rural areas, but rather it is a process to consider elimination of existing regulations. If the Commission seeks to consider the NARUC [National Association of Regulatory Utility Commissioners] White Paper on the benefits of imposing additional service quality requirements on rural LECs, then a separate proceeding is appropriate for its consideration."); WorldCom Comments at p. 9 ("The Commission's proposal to impose new service quality reporting requirements on CLECs in a biennial review proceeding is wholly inconsistent with the objectives of Section 11 of the Act."); Verizon Comments at p. 9 ("[E]xtending these reporting requirements to unregulated carriers would be contrary to the deregulatory goals of the Telecommunications Act of 1996.").

5 *See, e.g.*, Comments of the Indiana Utility Regulatory Commission (Indiana Commission) at p. 4; Comments of the Public Service Commission of Wisconsin (Wisconsin Commission) at p. 9; Comments of the Michigan Public Service Commission (Michigan Commission) at p. 4.

III. COMMENTERS CANNOT LOGICALLY CLAIM BOTH THAT COMPETITION NECESSITATES ADDITIONAL REPORTING AND THAT NO LOCAL EXCHANGE COMPETITION EXISTS

While the Commission has already concluded that the service quality report no longer serves its original purpose,[6] the Service Quality Notice also seeks comment on whether consumers require additional service quality information to make informed competitive choices.[7] Ironically, the same commenters that claim no meaningful competition exists[8] have endorsed an extension of service quality reporting requirements to new classes of carriers as a means of promoting informed competitive choices.[9] Similarly, commenters have claimed that greater competition among local exchange carriers increases the need for service quality reporting in order to give consumers necessary information.[10] These commenters miss the mark. Commenters cannot argue in the same breath that competition does and does not exist, and their suggestions that additional regulatory requirements will promote competition are fundamentally inconsistent with Section 11 and the biennial review process.

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6 *See, e.g.,* Service Quality Notice at ¶ 2: "First, we propose to eliminate the bulk of the existing service quality reporting requirements, which no longer make sense in today's marketplace."

7 *Id.* at ¶ 6: "We believe that even in a robustly competitive environment, public disclosure of quality of service information can be an important way to safeguard consumer interests."

8 *See, e.g.,* Michigan Commission Comments at p. 2 ("[W]e do not have meaningful economic competition between providers of basic local service at this time."); Comments of the Communications Workers of America (CWA) at p. 3; Comments of Wyoming Public Service Commission (Wyoming Commission) at p. 2; Comments of the National Association of Consumer Utility Advocates (NASUCA) at p. 5; Comments of California Public Utilities Commission (California Commission) at p. 2; Indiana Commission Comments at p. 2.

9 *See* Michigan Commission Comments at p. 4 ("[I]f consumers had access to service quality data from all carriers providing local exchange service in their area, they would be in a better position to make an informed choice between, or among, carriers."); CWA Comments at pp. 24-25; Wyoming Commission Comments at p. 4; NASUCA Comments at p. 9; California Commission Comments at p. 7; Indiana Commission Comments at p. 4.

10 Comments of the General Services Administration (GSA) at p. 4.

As Chairman Powell has observed, deregulation under Section 11 is an essential ingredient in the development of competition.[11] The Telecommunications Act of 1996 (1996 Act) sought to "*promote competition and reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers...."[12] Nothing in the 1996 Act calls for *increased* regulation in the face of developing competition. To the contrary, under the plain meaning of Section 11, the Commission must deregulate to spur developing competition. In accordance with the Section 11 mandate, the Commission should engage in meaningful deregulation now and not substitute its judgment for that of the marketplace.

The Commission must not adopt new service quality reporting requirements under the guise of consumer protection merely to satisfy its regulatory curiosity. As recently explained by then-Commissioner Powell, "consumer protection is important, but it should be just that and not a straw man for engaging in industrial policy."[13] Commissioner Powell has also warned against the "continued tendency to invoke the ancient mantra 'to protect against discriminatory

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11 *See* Stephen Labaton, *New F.C.C. Chief Would Curb Agency Reach*, N.Y. TIMES, Feb. 6, 2001, at C1 (*quoting* Chairman Michael K. Powell: "I do not believe deregulation is like a dessert that you serve after people have fed on their vegetables and is a reward for the creation of competition. I believe that deregulation is instead a critical ingredient to facilitating competition, not something to be handed out after there is a substantial number of players in the market"); *see also Separate Statement of Commissioner Michael K. Powell re: Petition for Forbearance of the Independent Telephone and Telecommunications Alliance* (AAD File No. 98-43), *and related proceedings* (CC Docket No. 97-11, CC Docket No. 98-81, CC Docket No. 96-150, CC Docket No. 98-117, WT Docket No. 96-162, CC Docket No. 96-149, CC Docket No. 96-61), in *Petition for Forbearance of the Independent Telephone and Telecommunications Alliance, et al.*, First Order on Reconsideration and First Memorandum Opinion and Order in WT Docket No. 96-162 and AAD File No. 98-43, FCC 99-102 (rel. June 30, 1999) (*Separate Statement of Commissioner Powell*), at p. 1: "The movement toward a competitive environment means that we must take into fuller consideration the necessity, viability, and *the potentially distorting competitive consequences* of old familiar regulatory devices." (emphasis added)

12 Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996) (emphasis added); *see also* Service Quality Notice at ¶ 1.

13 *See* "The Great Digital Broadband Migration," Remarks of Michael K. Powell, Commissioner of the Federal Communications Commission before the Progress and Freedom Foundation, Washington, D.C., December 8, 2000.

this or that' as glib justification for continued regulatory constraints."[14] As consumers have done for much of the history of the nation, the Commission should trust marketplace forces and competition to generate sufficient information to permit informed competitive choices, in addition to high-quality products and services.

IV. THE RECORD DEMONSTRATES THAT IMPOSING BURDENSOME REPORTING REQUIREMENTS ON SMALL AND MIDSIZE CARRIERS WILL GENERATE NO CONSUMER BENEFITS

The Commission's questions regarding whether consumers require this additional information have generated scant consumer response. For example, the only consumer organization that filed comments in this proceeding is the National Association of State Consumer Utility Advocates (NASUCA). Tellingly, NASUCA's comments made no specific allegations that consumers need additional information from midsize carriers.

There is broad skepticism among competitive LECs (CLECs), interexchange carriers and incumbent LECs alike as to the utility of expanding service quality reporting requirements for small and midsize carriers. This skepticism reinforces the principle of differentiated burdens that has long guided the Commission's regulatory approach.[15] The Association for Local Telecommunications Services (ALTS) believes "reporting requirements should not apply to small rural LECs"[16] and suggests that only those carriers currently required to file service quality reports should continue to do so because their service quality has worsened demonstrably in the face of increasing competition.[17] AT&T and WorldCom stress the need both

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14 *See* Separate Statement of Commissioner Powell at p. 2.

15 *See, e.g.,* Covad Comments at p. 7: "The Commission has historically exempted smaller carriers from the reporting requirements it imposes on larger incumbent LECs...."

16 ALTS Comments at p. 1.

17 *Id.* at pp. 5-6.

to maintain current reporting requirements for price cap LECs[18] and to protect CLECs from new service quality reporting requirements because their smaller sizes and more limited resources render the requirements unduly burdensome.[19] In addition, the United States Telecom Association (USTA) has suggested it is unlikely that even streamlined ARMIS reports will serve to inform consumer choices because consumers rely on marketing, opinions of family and friends and their personal experiences to guide their purchasing decisions.[20]

Similarly, OMB has indicated its disapproval of the extension of reporting requirements to new carriers pursuant to the Paperwork Reductions Act because the record has failed to demonstrate a significant benefit in so extending these requirements.[21] This conclusion undermines the NARUC White Paper and commenters' claims that consumers require information from all carriers in order to make meaningful choices among service providers.[22] To the extent that NARUC members believe it is necessary to obtain service quality data on a carrier-specific basis, these members are in a position to obtain the information they deem necessary. It is not, however, appropriate to continue to maintain federal reporting requirements in light of the Section 11 mandate. In conclusion, the record shows clearly consumers neither require nor stand to benefit from new and onerous small and midsize carrier reporting, and OMB's disapproval should remove any doubt the Commission may have regarding the propriety and utility of extending federal reporting requirements in this manner.

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18 AT&T Comments at pp. 8, 10; WorldCom Comments at p.6

19 AT&T Comments at pp. 10-12; WorldCom Comments at pp. 9-10.

20 USTA Comments at p. 2; *see also* SBC Comments at p. 9; Verizon Comments at p. 9.

21 OMB Comments at p. 1.

22 *See* Service Quality Notice at ¶ 29.

V. CONCLUSION

The Commission does not possess the statutory authority under Section 11 to extent its service quality reporting requirements to new classes of carriers. Additionally, there is no support in the record to justify the Commission's extension of ARMIS service quality reporting requirements to new classes of carriers or to justify the continuation of these reporting requirements for midsize carriers currently required to file. The record also demonstrates that consumers do not need the Commission to mandate additional reporting requirements by midsize carriers and will not benefit from such burdensome requirements. For all of these reasons, ITTA urges the Commission to eliminate all service quality reporting for midsize carriers and to refrain from extending these burdensome reporting requirements to additional classes of carriers, as described in its comments and reply comments in this proceeding.

Respectfully submitted,

THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE

David W. Zesiger
Executive Director
The Independent Telephone &
Telecommunications Alliance
1300 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20036

Karen Brinkmann
Richard R. Cameron
Benoit Jacqmotte
Latham & Watkins
1001 Pennsylvania Avenue, N.W., Suite 1300
Washington, D.C. 20004-2505

Its Attorneys

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